

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Expanded Interconnection with)
Local Telephone Company Facilities)
)
Amendment of the Part 69 Allocation)
of General Support Facilities Costs)

CC Docket No. 91-141

CC Docket No. 92-222

TO: THE COMMISSION

EMERGENCY PETITION TO HOLD PROCEEDINGS IN ABEYANCE

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, hereby petitions the Commission to hold in abeyance the Common Carrier Bureau's (the "Bureau's") review of LEC zone density pricing plans, filed pursuant to the *Expanded Interconnection Order*,¹ until the Commission has completed a full investigation of LEC volume and term discounts for interstate special access services and has prescribed new, cost-based rates; and also to postpone any action on General Support Facilities ("GSF") cost allocation changes in CC Docket No. 92-222 until it has remedied the excessive and discriminatory volume and term discounts found in current LEC interstate special access tariffs.

MFS is compelled to file this petition on an emergency basis because it faces imminent and irreparable competitive harm if the Commission acts on zone density

¹ *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141 and CC Docket No. 92-222, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369 (1992) (the "Order").

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pricing and GSF allocations before it addresses the equally important issue of unbridled LEC discounts for interstate special access services. Absent immediate Commission action, LEC zone density pricing plans are likely to go into effect in some study areas as early as May 17, 1993, which would permit LECs to reduce high capacity special access rates by as much as 10% in the zones where they face the most intense competition. In addition, price cap LECs will be able to reduce their DS1 and DS3 prices across the board by an additional 5% in their annual access tariff filings that will become effective on July 1, and the Commission's GSF reallocation proposal would result in still further rate reductions, likely on the order of 5 to 10 percent, with the exact amount depending on each LEC's GSF costs. Thus, LEC special access rates, which are already at discriminatory and predatorily low levels due to unrestrained and excessive volume and term discounting, could be reduced by as much as an additional 25 percent within the next few months.²

As discussed below, the Commission's inquiry into unbridled LEC volume and term discounts is still at an early stage and has not run its course. The Commission still has no basis for determining that current LEC volume and term discount rates are just and reasonable, much less to assume that interstate special access rates reduced dramatically below current depressed levels as the result of zone density pricing and GSF

² Significantly, the percentages discussed above are the *average* reductions possible for the price cap subindexes composed of a weighted average of *all* DS1 and DS3 service rate elements within a given pricing zone. Nothing in the Commission's current rules or proposals requires that these reductions be applied uniformly to all rate elements within a subindex, so that it would be possible for LECs to reduce some of their volume and term discount offerings by considerably *more* than 25 percent. Moreover, current Commission rules and proposals do not require that *any* cost data be submitted in connection with rate changes within the price cap bands.

reallocation would be cost justified. It would therefore be irrational and imprudent prior to completion of the volume/term discount inquiry to permit the LECs to reduce these questionable rates even further, without providing any cost justification and without any safeguards against unreasonable discrimination. The initiation of such further rate decreases on top of the virtually unbridled rate flexibility awarded the LECs under volume/term discounting will almost certainly cause serious and irreparable harm to CAPs and leave competitive special access services stillborn.

In the *Expanded Interconnection Order*, the Commission found that, while "reasonable volume and term discounts can be a useful and legitimate means of pricing special access services to recognize the efficiencies associated with larger volumes of traffic and the certainty of longer term deals," nonetheless "[t]he largest of the volume and term discounts cited by MFS, some of which may result in total discounts of more than 70%, however, may be anticompetitive or raise questions of discrimination." *Order*, paras. 199, 200. The Commission concluded that "the largest of the discounts offered by the LECs warrant some additional inquiry to help us determine whether we should promulgate guidelines requiring cost justification of any subset of LEC volume and term discounts," and directed the Bureau to obtain cost support data from the LECs for this purpose. *Id.*, para. 200 (footnote omitted). MFS' pending Petition for Limited Reconsideration and Clarification of the *Order*, filed December 18, 1992, requests that the Commission investigate *all* special access volume and term discounts and that it immediately prescribe rules requiring that discounts be cost justified. From a marketplace perspective, MFS submits that this issue is, beyond question, the single most

important competitive issue facing the CAP industry. As MFS earlier argued, failure to resolve this matter promptly would leave special access competition an empty, theoretical concept.

The Bureau, pursuant to the *Order*, requested that four LECs submit cost support data for their most highly discounted special access offerings. As MFS stated in an *ex parte* letter to the Chief of the Bureau, submitted on March 3, 1993 (a copy of which appears as Attachment A hereto), the LEC responses were from MFS' perspective wholly inadequate to permit a competent analysis of their rate levels. MFS therefore requested that the Bureau expand the scope of its inquiry into LEC volume and term discounts, and that it require the LECs to provide additional and more detailed cost data.³ To date, the Bureau has not released any findings relating to its inquiry nor (to MFS' knowledge) taken any action to gather additional information. Although MFS appreciates that the Bureau is proceeding in good faith to address these issues and that its staff is limited, every day's delay in resolving this threshold issue results in a greater percentage of the

In the meantime, while the volume and term discount proceeding kicks into first gear, most of the Tier 1 LECs have filed zone density pricing plans with the Bureau, as authorized by the *Order*, paras. 179-184. These carriers propose to deaverage rates for DS1 and DS3 services in three zones. Under the *Order*, each service is subject to a separate subindex in each zone. As the Commission explained,

under this system, a LEC could lower prices for DS1 [or DS3] services in the highest density zone by as much as 10% per year adjusted for the price cap index (PCI), and could raise prices for DS1 [or DS3] services in the lowest density zone by no more than 5% per year adjusted for the PCI, without triggering any of the additional cost justification or advance notice requirements contained in the price cap rules.

Order, para. 182 (footnotes omitted). Zone density pricing may be implemented in a LEC study area as soon as "an interconnector has taken the expanded interconnection cross-connect element." *Order*, para. 179 n.411. In the case of those LECs that have interim interconnection tariffs in effect (namely New England Telephone, New York Telephone, Bell Atlantic, Illinois Bell, Centel of Illinois, and Pacific Bell), expanded interconnection services will be purchased under the permanent tariffs immediately after they take effect, which is scheduled for May 17, 1992. Thus, at least in some study areas, LECs would immediately be able to reduce DS1 and DS3 rates in their high density zones by 5 to 10 percent.⁴

⁴ The potential immediate reduction depends upon how far the LEC's current DS1 or DS3 subindex is above its price cap floor. If the subindex is currently exactly at the floor level (5% below the previous year's subindex adjusted for PCI changes), then an additional and immediate 5% reduction would be permissible because of the 10% downward pricing flexibility allowed within zones. If the subindex is currently above the floor level, a greater price reduction would be possible.

These LECs would then be permitted to grant an *additional* 10 percent reduction in their price cap tariffs that will become effective on July 1, 1993, as would the remaining Tier 1 LECs when their zone density plans take effect. Moreover, the LECs have proposed that GSF reallocation be reflected as an exogenous cost reduction in the special access price cap index ("PCI") effective July 1, 1993. If this takes place, then the PCI will be reduced by 5 to 10 percent, depending on each LEC's GSF costs, and since DS1 and DS3 subindex pricing flexibility is *relative* to changes in the PCI, this means that the total July 1 price reductions in the high density zone (i.e., the zone most susceptible to CAP competition) could be as much as 15 to 20 percent above and beyond the already incredibly low levels resulting from unbridled volume and term pricing flexibility. Those LECs who implement zone pricing before July 1 could reduce their rates by approximately an additional 25 percent within a two month period. The potential price reductions are illustrated in the following table, which is based on actual price cap data recently filed by BellSouth:

Table 1

1.	Current Special Access PCI (as of 1/26/93)		98.8839
2.	Current DS1 Subindex (as of 1/26/93)		92.8569
3.	Current Band Limits of DS1 Subindex		
	a.	Upper	98.7929
	b.	Lower	89.5469
4.	Initial Band Limits of High Density DS1 Subindex (illustrative)*		
	a.	Upper	98.7929
	b.	Lower	84.9239
5.	Initial High Density DS1 Subindex (Illustrative)**		84.9239
6.	New Special Access PCI (7/1/93) (Illustrative)***		92.1598
7.	Change in PCI (L6/L1)		.932
8.	New Band Limits of DS1 Subindex		
	a. (L2*(L7+.05))	Upper	91.1855
	b. (L2*(L7-.05))	Lower	81.8998
9.	New Band Limits of High Density DS1 Subindex		
	a. (L5*(L7+.05))	Upper	83.3953
	b. (L5*(L7-.10))	Lower	70.6567
10.	Cumulative Allowable Reduction in High Density Zone DS1 Rates (L2-L9b)/L2)		23.9%

* If zone pricing becomes effective before 7/1/93 price cap revisions.

** Assumes maximum allowable reduction of DS1 rates in high density zone.

*** Assumes 4.0% inflation, 3.3% productivity factor, and 7.5% exogenous cost reduction due to GSF reallocation.

As shown above, a 25 percent reduction in DS1 or DS3 rates—with absolutely no cost data required to be filed in support—is entirely conceivable under the Commission's current rules coupled with its proposal for GSF reallocation. This example, using the conservative assumption of a 7.5 percent reduction due to GSF reallocation, shows that

the LEC would be permitted to reduce DS1 rates by almost 24 percent. (Precisely the same rules would apply to changes in DS3 rates.) Some LECs may be able to take even larger reductions. And, as stated in note 2, *supra*, these reductions need not be applied uniformly to all rate elements, so that, as experience demonstrates, some of the most steeply-discounted service options could be reduced by greater percentages.

Significantly, even the grossly inadequate and conclusory cost information provided to date by the BOCs demonstrates clearly that price reductions of 20 percent or more below existing levels (deflated through volume/term discount pricing) would be predatory in the case of the most highly discounted special access services.⁵ For example, Bell Atlantic alleges that its monthly cost for DS3C (a DS3 "three-pack") interoffice mileage is \$2,187.43 plus \$113.74 per mile. It offers this service at rates as low as \$2,294.22 plus \$375.81 per mile for five-year term customers. Also, Pacific Bell offers a DS3 "twelve-pack" channel termination at a rate of \$9,982 per month for a five year term, as contrasted to an alleged monthly cost of \$7,627; and Ameritech offers DS3 channel mileage in Illinois at monthly rates of \$365 per termination plus \$113 per mile for a 60 month term, with an alleged cost of \$323.56 per termination plus \$75.25 per mile. Even if it is assumed for the sake of argument that the LECs' cost analyses are methodologically correct and accurate—which MFS does not concede—the LECs' own

⁵ All cost data cited in this paragraph are taken from the information submitted to the Common Carrier Bureau on January 15, 1993, by Ameritech, Bell Atlantic, and Pacific Bell, in response to the Bureau's inquiries concerning these carriers' volume and term discounts for interstate special access service. *See* Attachment A.

data concerning their steepest volume and term discounts show that prices reduced by 20 to 25 percent would be below cost in many cases.

At present, absent a Section 208 complaint and its ensuing delay, protestants have little recourse to combat such LEC predatory pricing. Moreover, any such challenge will be extraordinarily time consuming and the standards unclear. Meanwhile, the LECs will be able to continue pricing below cost, while the challenge works its way through the agency pipeline, with an immediate and irreparable effect on local special access competition.

If the Commission were to approve zone density pricing plans and to implement its proposed GSF cost reallocation under these conditions and prior to resolving the volume/term discount inquiry, it would effectively be authorizing LECs to engage in below-cost predatory pricing. It is difficult to imagine any step that would be more inimical to the pro-competitive goals of the *Order* than this. The benefits of economic efficiency, improved productivity, and greater consumer choice that were expected to result from expanded interconnection cannot develop if the LECs are permitted to offer anti-competitive prices, and to cross-subsidize these prices with inflated revenues from other, less competitive offerings.⁶ In short, the LECs should not be able to avail

⁶ Large users of special access service may well be looking forward to the prospect of 25 percent rate reductions, and thus may argue that any restrictions on LEC pricing flexibility would be contrary to their interests. They are not necessarily correct even from their own perspective, since if the LECs succeed in driving competitors out of the market the short-term benefits of price reductions would likely be offset in the longer term by excessive costs resulting from the lack of meaningful competitive alternatives. More importantly, however, the Commission's statutory obligation is to protect the overall public interest and not the narrow private interests of a particular class of users. Any benefit that large users realize through price reductions will be offset by price increases elsewhere—the GSF cost reallocation will result in increases in the

themselves of any additional significant discount pricing until the unbundled volume/term discounts are fully investigated and, as MFS believes, rendered unlawful.

For these reasons, MFS urges the Commission, on an urgent and immediate basis, to instruct the Bureau to defer approval of any zone density pricing plans until after (1) the Bureau has completed its pending inquiry into certain LEC volume and term discounts *and* conducted a similar inquiry into the discounts offered by the other Bell Operating Companies and GTE; and (2) the Commission has reviewed the results of these inquiries and prescribed binding guidelines for cost justification of volume and term discounts. MFS also urges the Commission to hold CC Docket No. 92-222 in abeyance

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I hereby certify that on this 23rd day of March 1993, copies of an Emergency Petition To Hold Proceedings In Abeyance were sent by first class mail, postage prepaid, to the following:

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